

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE J.B.KOSHY**

**&**

**THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN**

**TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929**

**MFA.No. 802 of 2002(B)**

**OPMV.479/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA**

**APPELLANT/PETITIONER:**

**S.MANIKANDAN S/O.K.SEKAR, HOUSE NO.373,  
WARD NO.III, CENTRAL DIVISION, ARUVIKKAD ESTATE,  
MATTUPETTY P.O.,MUNNAR (NOW MAJOR)**

**BY ADV. SRI.MATHEW JOHN (K)  
SRI.BABY THOMAS**

**RESPONDENTS/RESPONDENTS:**

- 1. S.SUBHASHCHANDRA BOSE S/O. SAIMON,  
CHOCKANAD ESTATE, MUNNAR**
- 2. REV.N.T.JESUDHAS.R.CHANDRAN C.S.I.  
PARASONAGE, MATTUPETU ESTATE, C.S.I. CHURCH,  
MUNNAR, NOW RESIDING AT C.S.I.PARSONAGE, PADGIRI  
PADGIRI P.O., MANALAREE, NEMMARA, PALAKKAD DIST.**
- 3. UNITED INDIA INSURANCE CO. LTD.,  
REPRESENTED BY ITS DIVISIONAL MANAGER,  
MUVATTUPUZHA.**

**BY ADV. SRI.VARGHESE P.THOMAS**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD  
ON 05/06/2007 ,THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:**

J.B.Koshy & K.P.Balachandran, JJ.

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M.F.A.No. 802 of 2002  
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**JUDGMENT**

Koshy, J.

The appellant/claimant, at the age of 16, suffered very serious injuries in a motor accident, caused due to the negligence of the driver of the vehicle insured by the third respondent Insurance Company. As a result of the accident, he was completely bed ridden and there was 100% disability. He claimed a total compensation of Rupees ten lakhs. The Tribunal awarded an amount of Rs.3,43,000/-. The only dispute is with regard to the quantum of compensation. As regards the injuries, there is no dispute. The Tribunal summarised the injuries in paragraph 7 of the award, which are as follows:

"The petitioner was aged 16 at the time of the accident. Immediately after the

accident, he was taken to a hospital near the place of occurrence. From there he was shifted to General Hospital (Tata Tea Limited), Munnar. The doctor, who treated him, was examined as PW2. He was the Chief Surgeon of the hospital. Exhibit X1 (copy) is the case sheet produced by him. His unchallenged testimony proves that the petitioner is a traumatic paraplegia. 3 times surgery was done on his back bone. He is completely bed ridden. He has become a paraplegic below the chest. It can never be cured. Throughout his life he requires assistance of someone. He has no control over passing of stool and urine. He cannot lead a marital life. He is incapable of sexual acts. The doctor has further stated that the petitioner has become a complete vegetable. It has come out in his evidence that he still visits the hospital as an out patient."

As per Exhibit A9 disability certificate issued by the doctor, the physical disability is 75%. But,

he is totally bed ridden. Loss of earning capacity is 100% in view of the paraplegia. He requires continuous treatment. He could not do anything of his own and it is pathetic case. The Tribunal awarded Rs.75,000/- for loss of enjoyment and amenities of life and for loss of marital life and for permanent disablement Rupees one lakh was awarded. It is the contention of the appellant that for loss of earning power and disability, the Tribunal ought to have awarded compensation scientifically. Of course, at the time of the accident, the appellant was aged 16 and was not an earning member. But, under the second schedule for a non-earning person notional income is to be fixed at Rupees fifteen thousand per year. The Apex Court, in several decisions, held that the second schedule shall be applied as a guideline while determining the claim for compensation under Section 166 of the Motor Vehicles Act also [see the

three member Bench decision in **Smt.Supe Dei v. M/s. National Insurance Co.Ltd.** (JT 2002 (Suppl.1) SC 451) and the latest decision in **Abati Bezharuah v. Dy. Director General, Geological Survey of India** ((2003) 3 SCC 148)]. If that be so, Rupees fifteen thousand can be taken as the notional income and taking 16 as the multiplier, the compensation payable will be Rs.2,40,000/-. We are of the view that for loss of earning power and disability, the Tribunal ought to have granted Rs.2,40,000/- instead of Rupees one lakh. It is submitted that the amount granted for pain and sufferings, by standers expenses, future treatment, etc. are very meagre. Considering the total amount granted, we are not enhancing the compensation. The additional amount that is Rs.1,40,000/- should be deposited by the third respondent Insurance Company with 8% interest from the date of application till date of

deposit. Out of the above, Rupees thirty thousand shall be disbursed to the claimant. Balance should be deposited in Fixed Deposit in a Nationalised Bank for a period of five years and the quarterly interest shall be paid to the claimant.

The appeal is allowed in part.

(J.B.Koshy, Judge)

5<sup>th</sup> June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

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M.F.A.No.802 of 2002

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**JUDGMENT**

5<sup>th</sup> June, 2007